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## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

**[A-570-898]**

#### **Chlorinated Isocyanurates from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Antidumping Duty Administrative Review; 2012-2013 and Notice of Amended Final Results**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On October 24, 2018, the United States Court of International Trade (CIT) entered final judgment sustaining the final results of remand redetermination pursuant to court order by the Department of Commerce (Commerce) pertaining to the antidumping duty (AD) administrative review of chlorinated isocyanurates (chlorinated isos) from the People's Republic of China (China). Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce's final results in the AD review of chlorinated isos from China.

**DATES:** Applicable November 3, 2018.

**FOR FURTHER INFORMATION CONTACT:** Sean Carey, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4261.

#### **SUPPLEMENTARY INFORMATION:**

##### *Background*

On January 28, 2015, Commerce published its final results in the eighth AD review of

chlorinated isos from China.<sup>1</sup> Commerce selected the two largest exporters, Hebei Jiheng Chemical Co., Ltd. and Juancheng Kangtai Chemical Co., Ltd., as the mandatory respondents, and determined that Heze Huayi Chemical Co., Ltd. (Heze Huayi), Arch Chemicals (China) Co., Ltd., and Zucheng Taisheng Chemical Co., Ltd. demonstrated their eligibility for separate rate status.<sup>2</sup> On January 28, 2015, Commerce published the *Final Results* and assigned Heze Huayi the separate rate of 53.15 percent from the *Seventh Review*<sup>3</sup> consistent with our past practice because both mandatory respondents received zero margins and none of the separate rate companies had its own calculated rate from the segment immediately prior to the instant segment.

Heze Huayi appealed Commerce's decisions not to treat Heze Huayi as a mandatory or voluntary respondent and not to apply the zero rate of the mandatory respondents to Heze Huayi. While the case was pending before the CIT, in June 2016, Commerce voluntarily sought a remand<sup>4</sup> to consider the impact of the Court of Appeals for the Federal Circuit's decision in *Albemarle Corp. v. United States*.<sup>5</sup> On September 11, 2018, the Court held a telephone status conference and ordered that the Government "advise the court in one week from September 11, 2018, if they have any reason for anything other than a zero rate for all outstanding entries."<sup>6</sup> Commerce responded within the one-week deadline that Commerce's request for a voluntary remand on this issue was still pending; however, in light of the Court's request, Commerce stated that it had identified no "reason for anything other than a zero rate" to be applied to Heze

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<sup>1</sup> See *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4539 (January 28, 2015) and accompanying Issues and Decision Memorandum (*Final Results*).

<sup>2</sup> See *Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 43391 (July 25, 2014) (Preliminary Results), and accompanying Decision Memorandum, at 5-6.

<sup>3</sup> See *Chlorinated Isocyanurates from the People's Republic of China; 2011-2012; Final Results of Antidumping Duty Administrative Review*, 79 FR 4875, 4876 (January 30, 2014) (*Seventh Review*).

Huayi's entries.<sup>7</sup> On September 28, 2018, the Court ordered Commerce to assign Heze Huayi the mandatory respondents' weighted-average zero rate.<sup>8</sup> On remand, Commerce, under respectful protest, assigned Heze Huayi the mandatory respondents' weighted-average zero rate.<sup>9</sup> On October 24, 2018, the CIT sustained Commerce's Final Redetermination.<sup>10</sup>

#### *Timken Notice*

In its decision in *Timken*,<sup>11</sup> as clarified by *Diamond Sawblades*,<sup>12</sup> the Federal Circuit held that, pursuant to section 516A(c) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's October 24, 2018, judgment constitutes a final decision of that court that is not in harmony with Commerce's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, Commerce will continue suspension of liquidation of subject merchandise pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

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<sup>4</sup> See *Heze Huayi Chemical Co. Ltd., v United States*, Ct. No. 15-27, Defendant's Supplemental Brief and Motion for Voluntary Remand, Docket #68, June 21, 2016 ("In light of the intervening legal decision in *Albemarle*, we respectfully request that the Court grant a voluntary remand for Commerce to consider the application of *Albemarle* to the facts of this case.")

<sup>5</sup> 821 F.3d 1345 (Fed. Cir. 2016).

<sup>6</sup> See *Heze Huayi Chemical Co., Ltd. v United States*, Ct. No. 15-27, Court Order, Docket #81, Sept. 12, 2018.

<sup>7</sup> See *Heze Huayi Chemical Co., Ltd., v United States*, Defendant's Response to Court Order, Ct. No. 15-27, Docket #82, at 1-2, Sept. 18, 2018.

<sup>8</sup> See *Remand Order* at 7.

<sup>9</sup> See Final Results of Redetermination Pursuant to Court Remand, *Heze Huayi Chemical Co., Ltd. v. United States*, Court No. 15-00027, Slip Op. 18-130 (CIT September 28, 2018), dated October 19, 2018 (Final Redetermination).

<sup>10</sup> See *Heze Huayi Chemical Co., Ltd. v United States*, Slip Op. 18-149, Consolidated Court No. 15-00027 (CIT 2018).

<sup>11</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>12</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

### *Amended Final Results*

Because there is now a final court decision, Commerce is amending the *Final Results* and assigning Heze Huayi the mandatory respondents' weighted-average zero rate<sup>13</sup> for the period June 1, 2012, through May 31, 2013. In the event the CIT's ruling is not appealed, or, if appealed, is upheld by a final and conclusive court decision, we will instruct U.S. Customs and Border Protection (CBP) to liquidate Heze Huayi's appropriate entries without regard to antidumping duties.

### *Cash Deposit Rate*

Heze Huayi has a superseding cash deposit rate (*e.g.*, from a subsequent administrative review). Therefore, Commerce will not issue revised cash deposit instructions to CBP.

### *Notification to Interested Parties*

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1) and 777(i)(1) of the Act.

Dated: November 15, 2018.

**Gary Taverman,**  
*Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance.*

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<sup>13</sup> See Remand Order at 7.

